In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 229

FEDERICO MARIN GUTIERREZ,
PETITIONER,

v.

WATERMAN STEAMSHIP CORP.,
RESPONDENT.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinion of the Court of Appeals

The opinion of the Court of Appeals, printed as an appendix to the Petition (Pet. 15-21), is reported at 301 F. 2d 415.

Questions Presented

Respondent submits that question A as stated by Petitioner should be rephrased: "Does the obligation of sea-

worthiness traditionally owned by an owner of a ship extend to areas on land over which the shipowner has no control".

Respondent agrees that question B, as stated by the Petitioner, should be answered in the negative, but urges that there was no evidence before the District Court to support a finding of negligence on the part of the shipowner.

Statement of the Case

Respondent adds to petitioner's statement that Petitioner took his orders solely from the independent stevedoring contractor; he had no contact whatsoever with any of the vessel's officers or agents. The area where Petitioner was injured was owned, operated and under the possession and control of an entity not involved in the suit.

Argument

The opinion below is not in conflict with any Statute of Congress, nor with decisions of this Court or of other Circuits.

1. UNSEAWORTHINESS.

The cases cited by petitioner are not in point. They all decide that longshoremen injured because of defective ship's equipment, are entitled to recover from the shipowner even if they are standing on the dock at the time of the injury.

In *Strika* v. *Netherlands Ministry of Traffic*, 2 Cir. 1950, 185 F. 2d 555; cert. denied, (1951) 341 U.S. 904, the longshoreman was injured while on the dock, when a hatch cover fell on him because of the failure of the ships tackle.

In *Pope & Talbot, Inc. v. Cordray*, 9 Cir. 1958, 258 F. 2d 214, a longshoreman was injured aboard the vessel when a block, which was part of the ship's gear, dropped and struck him on the head.

In *American Export Lines, Inc. v. Revel*, 4 Cir. 1959, 266 F. 2d 82, a defective ship's winch caused a pallet loaded with drums to strike the side of the vessel, the drums fell to the pier and one of them injured the plaintiff.

Hagans v. Farrell Lines, Inc., 3 Cir. 1956, 237 F. 2d holds that a longshoreman standing on the dock and struck by a draft of cocoa beans because of a defective ship's winch, is entitled to recover.

The above cases are clearly distinguishable from the one under discussion. In every one of them the injury was directly caused by some defect in the ship's gear. Petitioner was injured because of a condition created on land by his employer in an area over which the vessel owner had no control.

The cases of *Ryan Stevedoring Co., Inc. v. Pan Atlantic Steamship Corp.*, 1956, 350 U.S. 124, 76 S. Ct. 232, 100 L. Ed. 133; *Amador v. A S J. Ludwig Mowinckels Rederi*, 2 Cir. 1955, 224 F. 2d 437, certiorari denied, 350 U.S. 901, 76 S. Ct. 179, 100 L. Ed. 791; *Gindrille v. American Hawaiian Steamship Company*, 3 Cir. 1955, 224 F. 2d 746; *Curtiss v. A. Garcia & Cia.*, 3 Cir. 1957, 241 F. 2d 30; *Reddick v. McAllister Lighterage Line*, 2 Cir. 1958, 258 F. 2d 297 and *Rich v. Ellerman & Bucknall SS Co.*, 2 Cir. 1960, 278 F. 2d 704 are also not in point. In each of these the longshoreman was injured on board the vessel because of an unseaworthy condition created by the improper stowage of the cargo aboard the vessel.

The question presented in this case as to the extension of the doctrine of seaworthiness has been answered by another circuit in the same manner as the Court of Appeals.

In *Fredericks v. American Export Lines*, 2d Cir. 1955,

227 F. 2d 450, a longshoreman engaged in discharging cargo from a vessel was injured on a pier as a result of a defective skid furnished by the stevedoring contractor. In deciding that the long-shoreman was not entitled to recover the court states:

> "Finally, while in recent years the warranty of seaworthiness has been held by the Supreme Court to cover a pretty wide territory . . ., nevertheless, here the injury was incurred by a longshoreman standing on a pier, as a result of the failure of a defective appliance located on the pier and furnished by a subcontractor. No decision so far has extended the sweeping protection of the seaworthiness doctrine to this situation. No vessel was connected with the accident".

See also the cases cited by the Court of Appeals.

Partenweederei MS Belgrano v. *Weigel*, 9 Cir. 1962, 299 F. 2d 897.
Kent v. *Shell Oil Co.*, 5 Cir. 1961, 286 F. 2d 746.

It has long been established that a pier is an extension of the land and beyond the admiralty and maritime jurisdiction.

Cleveland T. & V. R. Co. v. *Cleveland SS Co.*, 208 U. S. 316 (1908).

State law applies to an accidental injury occurring upon a pier.

State Industrial Commission v. *Nordenholt Corp.*, 259 U.S. 263 (1922).
Smith & Sons v. *Taylor*, 276 U.S. (1928).
The Plymouth, 3 Wall. 20.

The extension of Admiralty and Maritime Jurisdiction Act, 46 U.S.C.A. 740 does not afford petitioner any remedy against the respondent. The Act extends the jurisdiction intended by Congress solely to damage or injury caused by a vessel on navigable water. Petitioner's injury was in no sense caused by "a vessel". It was not the vessel who failed to discover the spilled beans on the area where petitioner was injured, or who failed to take corrective action. The only connection between the spilled beans and the vessel was that the vessel had previously transported them as a common carrier by water.

II. NEGLIGENCE

The cases cited by petitioner are also not in point. In all of them the trial court had before it evidence of specific acts of negligence on the part of the vessel. In the case under discussion, as the record shows, there was not a scintilla of evidence to support a finding of negligence.

In *Imperial Oil, Limited* v. *Drlik*, 6 Cir. 1956, 234 F.2d 4, contrary to what is stated by petitioner, the plaintiff was not a longshoreman. He was an employee of an entity performing repairs to the vessel and was assisting the ship in undocking at the time of the injury. The mooring cables were running from the ship's winches and tied to spiles on shore. The tightening of the cables was done by means of the winch operated by a member of the vessel's crew who, without warning, set the winch in motion, causing one of the mooring cables to become taut and injuring the plaintiff who was handling the mooring line on shore. The court found that the ship owner had been negligent in not having some one coordinating the work of the crew member on board the vessel with that of the plaintiff on shore.

Beard v. *Ellerman Lines, Ltd.*, 3 Cir. 1961, 289 F.2d 201, can also be clearly distinguished. There was evidence that

the cargo was being discharged by dangerous methods, that the first officer of the vessel had observed the manner of discharging and that the vessel had failed to furnish plaintiff with a safe place to work. The longshoreman was injured aboard the vessel, and the jury found that the vessel had been negligent.

The statement contained in petitioner's brief regarding to what is held in *Marceau* v. *Great Lakes Transit Corp.*, 2 Cir. 1945, 146 F.2d 416, is incorrect. This case holds that a seaman is entitled to the remedies of the Jones Act, even if his injuries were suffered on shore, because at the time of the occurrence he was in the ship's service and the dock where he was injured was under the possession and control of the ship owner.

III. Laches

The Court of Appeals was justified in deciding that Petitioner's claim was barred by laches. The trial court's only basis for excusing the delay in bringing suit was that libelant had consulted with an attorney within the statutory period and to justify lack of prejudice, the court relied on the fact that certain witnesses and records were available. The records showed that the memory of the witnesses was quite impaired and that the testimony presented was in conflict with the documentary evidence under *McAllister* v. *United States*, 348 U.S. 19, 75 S. Ct. 6, 99 L. Ed. 20. There was ample basis in the record to sustain the Circuit Court's finding that the respondent was prejudiced by the delay.

IV. The Court of Appeals Did Not Deviate From This Court's Accepted Principles in Reviewing Findings of the Trial Court.

There having been no evidence whatsoever to support the finding of negligence, the court's finding as to unseaworthiness having been clearly erroneous, and the record clearly showing that Petitioner incurred in laches, without excusing his delay and prejudicing the respondent, the findings of the trial court were clearly erroneous and the Circuit Court was justified in reversing the decree.

Conclusion

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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